



**STRATHMORE LAW SCHOOL
MASTERS OF LAW (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8201: INTERNATIONAL CRIMINAL LAW**

Date: **Wednesday, 19th April 2023**

Time: **3 Hours**

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is a closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

QUESTION 1 [30 Marks]

- (a) With reference to the provisions of the Rome Statute and the relevant caselaw, define and discuss the different facets of the jurisdiction of the International Criminal Court. **(18 marks)**
- (b) Considering the record of the current and past situations, investigations, and cases before the International Criminal Court, discuss the mechanisms or modalities under the Rome Statute for triggering the jurisdiction of the International Criminal Court. **(12 marks)**

QUESTION 2 [15 Marks]

“There is no hierarchy of offences within the international criminal law, or within the Rome Statute. However, sexual offences should rank amongst the gravest. Correspondingly, they should also be one of the foremost priorities in the international community for prosecution”.

Fatou Bensouda ‘Challenging the culture of impunity for sexual and gender-based crimes’ in Ankumah, E (ed) *The International Criminal Court and Africa: One decade on* (2016) 79, 85

Critically examine the role and impact of international criminal law in addressing impunity for sexual and gender-based crimes.

QUESTION 3 [15 Marks]

Tanda is an African state located in East Africa. The country is demographically composed of two main ethnic communities: the Tandore who constitute about 70% of the population and the Gombeans who account for about 28%. Since obtaining independence in 1965, Tanda has had five presidents, all from the Tandore ethnic community. The Gombeans have historically felt politically and economically marginalized. This grievance led to the formation of an armed group, the Gombean Peoples' Liberation Front (GPLF) in 1996 to fight for the secession of the Gombe region where the majority of Gombeans are found.

In July 2022, GPLF bombed several buildings in Tandano, the capital city of Tanda. The attack killed 37 people, triggering a full-blown conflict between the Tanda National Defence Forces (TNDF) and the GPLF. Within weeks of the conflict, TNDF had taken over Southern Gombe. However, other parts of Gombe remained under the control of GPLF.

As they took over towns and villages in Southern Gombe, TNDF forces looted Gombean homes, businesses, livestock, and crops. The pillage of harvests and livestock left Gombean communities without access to secure food or sources of livelihood. The TNDF also distributed leaflets that demanded Gombeans to leave Southern Gombe immediately. According to a Gombean farmer who spoke to an international human rights group, the leaflets read as follows: "Every Gombean who lives here must leave the area or they will be killed".

As Gombean communities in Southern Gombe faced extreme deprivation and continued threats, many began to flee in greater numbers to the parts of Gombe which are controlled by GPLF, with some managing to seek refuge in the neighbouring country of Shamira. In a press release, the leadership of GPLF described the situation in Southern Gombe as "a clear campaign to exterminate the Gombean people who are legitimately exercising their right to self-determination". The statement concluded by stating that "the war to wipe Gombeans from the surface of the earth must be stopped immediately".

You are currently undertaking a fellowship in the Office of the Prosecution of the International Criminal Court (ICC). Your line manager has asked you to examine the situation in Tanda and prepare an opinion on whether any crimes falling under the jurisdiction of the ICC may have been committed. Prepare the opinion considering the provisions of the Rome Statute and any relevant jurisprudence. Assume that Tanda has ratified the Rome Statute.

QUESTION 4 [15 marks]

"The intent of the African states to create a court with criminal jurisdiction is noble, and given strong operational and constitutional backing, such a court has the potential to provide a strong African option to achieving justice for the victims of international and other serious crimes. However as proposed, the ACJHR [African Court of Justice and Human Rights] has a number of serious weaknesses that risk making it stillborn".

Kenyans for Peace with Truth and Justice, *Seeking justice or shielding suspects? An analysis of the Malabo Protocol on the African Court*, (2016) p. iv.

Critically analyse the above statement with a view to highlighting three main concerns or weaknesses of the proposed African Court of Justice and Human Rights as envisaged under the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol).

QUESTION 5 [15 Marks]

“The international Criminal justice landscape is currently dominated by the International Criminal Court (ICC) and its case choices, relationships with powers such as the US, and impacts upon conflicts. Yet some of the most dramatic developments in the field have taken place outside of the ICC, in hybrid courts and tribunals”.

Ainley, K and Kersten, M “Resilience and the impacts of hybrid courts’ (2020) 33(4) *Leiden Journal of International Law* 969.

With concrete examples from past or existing hybrid/mixed courts:

- (a) Describe three common features of hybrid/mixed courts. **[9 Marks]**
- (b) Discuss two advantages that hybrid/mixed courts are seen to offer in comparison to the *ad hoc* tribunals (e.g., ICTY and ICTR) or the International Criminal Court. **[6 Marks]**